



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2020-0705; FRL-9235-01-R4]**

#### **Air Plan Approval; North Carolina: Mecklenburg General Provisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg County Local Implementation Plan (LIP). The revision was submitted through the North Carolina Division Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality (MCAQ), via a letter dated April 24, 2020, and was received by EPA on June 19, 2020. The revision updates several Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP, including updating and revising certain definitions. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2020-0705, at [www.regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a

written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www2.epa.gov/dockets/commenting-epa-dockets](http://www2.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** Pearlene Williams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9144. Ms. Williams can also be reached via electronic mail at [williams.pearlene@epa.gov](mailto:williams.pearlene@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Mecklenburg County LIP was originally submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County prepared three submittals in order to modify the LIP for, among other things, general consistency with the North Carolina SIP.<sup>1</sup> The three submittals were submitted to EPA as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and also submitted the January 21, 2016, and January 14, 2019, updates. Due to an inconsistency with public notice at the local level, these submittals were withdrawn from EPA through a letter dated February 15, 2019. Mecklenburg County corrected this error, and NCDAQ submitted the updates in a revision dated April 24, 2020.<sup>2</sup>

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<sup>1</sup> The Mecklenburg County, North Carolina revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals – one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

<sup>2</sup> The April 24, 2020, submittal was received by EPA on June 19, 2020.

## II. What Action is EPA Proposing to Take?

On April 24, 2020, NCDAQ submitted to EPA changes to the MCAPCO to be incorporated into the LIP.<sup>3</sup> The January 14, 2019 portion of this submission includes changes to Rules 1.5102 - *Definition of Terms* and 1.5111 - *General Recordkeeping, Reporting and Monitoring Requirements* of MCAPCO Article 1.0000 - *Permitting Provisions for Air Pollution Sources, Rules and Operating Regulations for Acid Rain Sources, Title V and Toxic Air Pollutants*. The January 21, 2016 portion of this submission includes changes and updates to Rule 1.5104 - *General Duties and Powers of the Director, With the Approval of the Board* of MCAPCO Article 1.0000. These revisions are described in more detail below:

1. Rule 1.5102 - *Definition of Terms* is revised to add several new terms and to remove several obsolete terms from Rule 1.5102.<sup>4,5</sup> The term “*Construction*” is added and defined as the change in the method of operation or any change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status. Some activities excluded from the definition include clearing and grading, building access roads, and other activities. “*EPA Approves*” is added and defined as the full, interim or partial approvals by EPA. “*Facility*” is added and defined as all pollutant-emitting activities located on one or more contiguous or adjacent properties under common control. “*Insignificant Activities*” is added and defined as activities that are insignificant due to their category, size, or production rate. “*Potential Emissions*” is added and

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<sup>3</sup> The April 24, 2020, submittal contains changes to other Mecklenburg LIP-approved rules that are not addressed in this notice. EPA will be acting on those rules in separate actions.

<sup>4</sup> Although the definitions in Rule 1.5102 are global definitions that generally apply throughout the LIP, these definitions do not apply where they “conflict[] with any definition(s) included in MCAPCO Article 2.0000 – ‘Air Pollution Control Regulations and Procedures.’” For example, the Rule 1.5102 definitions do not apply where they conflict with definitions applicable to Mecklenburg’s prevention of significant deterioration (PSD) or nonattainment new source review (NNSR) programs. For Mecklenburg’s PSD program, “the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 apply” pursuant to Rule 2.0530(a) (unless an exception is explicitly stated in Rule 2.0530). For Mecklenburg’s NNSR program, “the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 apply” pursuant to Rule 2.0531(a) (unless an exception is explicitly stated in Rule 2.0531). Mecklenburg has requested minor changes to Rule 2.0530 (relating to PSD), which EPA will address in a separate notice.

<sup>5</sup> The reader should refer to the underlying submittal from MCAQ for the precise language of each definition. The descriptions of the definitions in this section are intended merely as a summary, and not as a complete restatement of each definition.

defined as “emissions of any air pollutant that would occur at the facility’s maximum capacity to emit any air pollutant under its physical and operational design.” This term allows Federally enforceable limitations, placed on the facility’s physical or operational capacities, to be considered as part of the facility’s design, and includes air pollution control equipment, restriction on hours of operation or the type or amount of material combusted, stored, or processed. This term also includes fugitive emissions as defined at 40 CFR 70.2, however it does not include a facility’s secondary emissions nor emissions from insignificant activities.

“*Regulated Air Pollutant*” is defined as nitrogen oxides or any volatile organic compound as defined under 40 CFR 51.100; any pollutant for which there is an ambient air quality standard as defined pursuant to 40 CFR Part 50; any pollutant that is regulated pursuant to MCAPCO Regulation 2.0524 – *New Source Performance Standards*, MCAPCO Regulation 2.1110 – *National Emission Standards for Hazardous Air Pollutants*, MCAPCO Regulation 2.1111 – *Maximum Achievable Control Technology*, or 40 CFR Parts 60, 61, or 63; any pollutant subject to a standard promulgated pursuant to section 112 of the CAA or other requirements established pursuant to section 112 of the CAA, including section 112(g) (but only for the facility subject to section 112 (g)(2) of the CAA), section 112 G) or (r) of the CAA and any Class I or II substance listed pursuant to section 602 of the CAA; or any toxic air pollutant listed in MCAPCO Regulation 2.1104 - *Toxic Air Pollutant Guidelines*. Rule 1.5102 is also revised to add the following additional terms: “*Administrator*,” “*Air Pollutant*,” “*Allowable Emissions*,” “*Applicable Requirements*,” “*Applicant*,” “*Application Package*,” “*CFR*,” “*EPA*,” “*Equivalent Unadulterated Fuels*,” “*Federally Enforceable*” or “*Federal Enforceable*,” “*Fuel Combustion Equipment*,” “*Green Wood*,” “*Hazardous Air Pollutant*,” “*Lesser Quantity Cutoff*,” “*Major Facility*,” “*Modification*,” “*Modified Facility*,” “*New Facility*,” “*Owner*” or “*Operator*,” “*Peak Shaving Generator*,” “*Permit*,” “*Permittee*,” “*Plans and Specifications*,” “*Responsible Official*,” “*Saw Mill*,” “*Title IV Source*,” “*Title V Source*,” “*Toxic Air Pollutants*,” and “*Unadulterated Fossil Fuel*.” These revisions generally correspond to the definitions in the state-approved SIP at

15A NCAC 02Q .0103 with minor exceptions.<sup>6</sup> Lastly, Rule 1.5102 is revised to remove the definitions of Cleaning Fires, Condensed Fumes, Dust-separating Equipment, Effective Stack Height, Low Volatile Solid Fuel, Smoke Density Measuring Device and Undesirable Level. Each of these terms are not operative in the currently approved version of the LIP because these terms do not appear elsewhere in the LIP. Therefore, their removal has no practical effect and will streamline Rule 1.5102.

2. Rule 1.5104 - *General Duties and Powers of the Director, With the Approval of the Board* is revised to make minor changes to wording, such as removing the word “to” from the beginning of certain paragraphs throughout for uniformity, capitalizing the word “regulations” in paragraph (c), and capitalizing the first letter of each word in the paragraphs where the word “to” was removed.

Paragraph (l) adds language to clarify that the Director makes inspections of sources and conducts tests as necessary.

Finally, the word “and” is also removed at the end of paragraph (k) to allow for the addition of a new paragraph, paragraph (m), which identifies the Director’s duty to require the facility to conduct tests and gather information to document compliance with emission standards and to effectuate the purpose of the Ordinance.

3. Rule 1.5111 - *General Recordkeeping, Reporting and Monitoring Requirements* is revised to make minor edits to punctuation, changing commas to semi-colons, and changing the word “under” to “pursuant to.” Additionally, the phrase “and transportation facilities” is removed from Rule 1.5111(f) and the reporting threshold in Rule 1.5111(f) is reduced from 25 tons per year to 5 tons per year of actual emissions of nitrogen oxides or volatile organic compounds for sources that emit these pollutants.

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<sup>6</sup> The SIP-approved statewide rules for North Carolina include a related “Definitions” section at 15A NCAC 02Q .0103. Due to differences between the LIP and the SIP, MCAPCO Rule 1.5102 and 15A NCAC 02Q .0103 are not identical, with each containing certain definitions that do not exist in the other version.

EPA is proposing to approve the incorporation of the aforementioned revisions to the MCAPCO rules into the Mecklenburg LIP because these rules add clarity to the LIP and are consistent with the CAA and applicable regulations.

### **III. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference MCAPCO Rules 1.5102 - *Definition of Terms* and 1.5111 - *General Recordkeeping, Reporting and Monitoring Requirements*, both which have an effective date of December 18, 2018; as well as Rule 1.5104 - *General Duties and Powers of the Director, With the Approval of the Board*, with an effective date of December 15, 2015, into the Mecklenburg County portion of the North Carolina SIP. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

### **IV. Proposed Action**

EPA is proposing to approve and incorporate into the Mecklenburg County LIP revisions to MCAPCO Rules 1.5102 - *Definition of Terms* and 1.5111 - *General Recordkeeping, Reporting and Monitoring Requirements*, effective on December 18, 2018, as well as Rule 1.5104 - *General Duties and Powers of the Director, With the Approval of the Board*, effective on December 15, 2015. EPA is proposing to approve these changes because they are consistent with the CAA.

### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided they meet the criteria of the CAA. This proposed action merely proposes to approve

state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 1356-3 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of

Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.



## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting, and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: November 8, 2021.

John Blevins,  
*Acting Regional Administrator,*  
*Region 4.*

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